



Councilmember Charles Allen

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Sexual Assault Victims' Rights Act of 2014 to expand the right to a sexual assault victim advocate to persons aged 12 years and older; to allow the Office of Victim Services and Justice Grants to certify sexual assault victim advocates; to expand the right of a victim to have a sexual assault victim advocate present during interviews with prosecutors; to clarify the right of a victim to have a sexual assault victim advocate present during interactions with law enforcement and prosecutors; to provide a victim with the right to receive information about their case from prosecutors; to clarify the process for handling and disposing of sexual assault forensic examination kits and physical evidence recovery kits; to clarify the information victims have the right to receive from the Metropolitan Police Department; to provide a right to confidentiality for communications between a victim and asexual assault victim advocate; to clarify the mandatory reporting requirements for sexual assault victim advocates; to clarify the timelines for processing of sexual assault forensic examination kits by the Department of Forensic Sciences; to establish a review committee to receive and investigate complaints from sexual assault victims; to create an annual report by the Sexual Assault Response Team; to improve data sharing among Sexual Assault Response Team members; to clarify the rights of victims when being provided emergency care; to expand the definition of sexual contact to include the removal of a person's clothing without their consent; and to clarify the right of a victim to compensation under existing insurance policies.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Sexual Assault Victims' Rights Amendment Act of 2019".

Sec. 2. The Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 23-1901 *et seq.*), is amended as follows:

(a) Section 101(c) (D.C. Official Code § 23-1907(a)) is amended as follows:

(1) Paragraph (2) is amended to read as follows:

42 “(2) “DC Sexual Assault Nurse Examiner Program” or “DC SANE Program”
43 means a program that provides comprehensive care to victims of rape, sexual assault, and other
44 sex crimes who are 12 years of age or older, operated by the Office of Victim Services and Justice
45 Grants, in collaboration with the Network for Victim Recovery of DC, or its successor entity, the
46 Medstar Washington Hospital Center, or its successor entity, where medical forensic exams are
47 conducted, and the DC Forensic Nurse Examiners, or its successor entity.”.

48 (2) Paragraph (5) is amended to read as follows:

49 “(5) “Interview” means any interview by the Metropolitan Police Department, or
50 other law enforcement agency with a sexual assault victim that occurs in conjunction with a sexual
51 assault victim receiving any medical treatment or forensic evidence collection related to sexual
52 assault at the hospital and any subsequent in-person interview with law enforcement related to the
53 sexual assault.”.

54 (3) Paragraph (8) is amended to read as follows:

55 “(8) “Sexual assault victim” means an individual 12 years of age or older against
56 whom sexual assault has been committed or is alleged to have been committed. The term also
57 includes a deceased victim of sexual assault”.

58 (4) Paragraph (9) is amended to read as follows:

59 “(9) “Sexual assault victim advocate” means:

60 “(A) A trained advocate employed by a community-based advocacy organization
61 that is a member of the DC SANE program, or its successor; or

62 “(B) A trained advocate who has received Basic Certification as certified by the
63 Office of Victim Services and Justice Grants.”.

64 (b) Section 101 (D.C. Official Code § 23-1908) is amended to read as follows:

65 “In addition to the rights set forth in subchapter I of this chapter, a sexual assault victim:

66 “(1) Shall have the right to have a sexual assault victim advocate present at any:

67 “(A) Forensic medical, evidentiary, or physical examination;

68 “(B) Interview at the hospital;

69 “(C) Subsequent in-person interview with law enforcement related to the sexual
70 assault; provided, that it meets the requirement of subparagraph (3) of this section;

71 “(D) Point during the hospital visit;

72 “(E) Initial interview with a prosecutor, or agent thereof, related to the sexual
73 assault; provided, that it meets the requirement of subparagraph (3) of this section; and

74 “(F) Subsequent in-person interview with a prosecutor, or agent thereof, related to
75 the sexual assault; provided, that it meets the requirement of subparagraph (3) of this section; and

76 “(2) Has the right to have an advocate present during instances listed in paragraph (1) of
77 this section even if the sexual assault victim previously declined the presence of an advocate.

78 “(3) The provisions of subparagraphs (C), (E), and (F) of this section shall become effective
79 at the latter of:

80 “(A) No later than 90 days after OVSJG has issued a Basic Certification to 10
81 sexual assault victim advocates; or

82 “(B) No later than July 1, 2018.”.

83 (c) Section 101(c) (D.C. Official Code § 23-1909) is amended as follows:

84 (1) Subsection (b) is amended to read as follows:

85 “(b) Law enforcement shall ensure that a sexual assault victim advocate is offered
86 to the sexual assault victim before the commencement of any in-person interview with the sexual
87 assault victim; provided, that:

88 “(1) If a sexual assault victim chooses to assert her or his right to a sexual
89 assault victim advocate, the law enforcement officer may only conduct a minimal facts interview
90 with the sexual assault victim before the sexual assault victim consults with a sexual assault victim
91 advocate; and

92 “(2) If a sexual assault victim declines her or his right to a sexual assault
93 advocate, the law enforcement officer shall notify the sexual assault victim of her or his right to
94 request a sexual assault advocate at any point during the law enforcement process.

95 “(3) Within 120 days after the effective date of this Act, the Office of Victim
96 Services and Justice grants shall submit a report to the Mayor with the following information:

97 “(A) An assessment of the possible needs of survivors;

98 “(B) Recommends a process and identifies adequate resources for
99 providing credentialed victim advocates outside of a hospital setting; and

100 “(C) Recommends changes to agencies’ operating procedures or
101 training.”.

102 (2) A new subsection (c) is added to read as follows:

103 “(c) A prosecutor shall ensure that a sexual assault victim advocate is offered to the
104 sexual assault victim prior to the commencement of any in-person interview with the sexual assault
105 victim; provided, that:

106 “(1) If a sexual assault victim chooses to assert her or his right to a sexual
107 assault victim advocate, the prosecutor or agent thereof may not conduct any subsequent interview
108 until the sexual assault victim advocate is present; and

109 “(2) If a sexual assault victim declines her or his right to a sexual assault
110 advocate, the prosecutor or agent thereof shall notify the sexual assault victim of her or his right
111 to request a community-based advocate at any point during the prosecutorial process.”.

112 (3) A new subsection (d) is added to read as follows:

113 “(d) In a case where the prosecutor declines the request of a warrant for an arrest or
114 a pre-petition custody order, or declines to prosecute a case presented to them by a law enforcement
115 authority, the prosecutor shall, within the boundaries of the law and the policy requirements of the
116 prosecutor’s office:

117 “(1) Notify the sexual assault victim, via an in-person meeting, by
118 telephone, or in writing, of the reason that the warrant for arrest or pre-petition custody order or
119 the prosecution was declined; and

120 “(2) At the request of the sexual assault victim or the sexual assault victim’s
121 representative, participate in an in-person meeting or telephone call with the sexual assault victim
122 to explain the reasons for declining the warrant or pre-petition custody order or declining to
123 prosecute a known offender.”.

124 (5) A new subsection (f) is added to read as follows:

125 “(f)(1) A sexual assault victim who requests access to the results of her or his
126 medical forensic exam, Physical Evidence Recovery Kit (PERK), or toxicology test shall be
127 provided those results by the Metropolitan Police Department, a sexual assault forensic nurse, or
128 a sexual assault victim advocate:

129 “(A) Within 15 business days of their request, if the results are
130 available; or

131 “(B) Within 15 business days from the date that the results become
132 available.

133 “(2) (A) At least once per year, the Office of Victim Services and Justice
134 Grants shall conduct training, in collaboration with the Department of Forensic Sciences and the
135 Office of the Chief Medical Examiner, for members of the Sexual Assault Response Team.

136 “(B) The training shall educate the relevant SART agency staff on
137 comprehension of the results of PERK and toxicology tests related to a medical forensic exam and
138 how to explain the results, in a victim-centered approach, to a sexual assault victim.

139 “(C) Each SART agency shall have at least 2 individuals on staff
140 who have completed the training.”.

141 (6) A new subsection (g) is added to read as follows:

142 “(g) In a sexual assault case where a an authorized law enforcement official intends
143 to destroy or dispose of the PERK or its probative contents before the expiration of the maximum
144 applicable statute of limitations, the sexual assault victim shall have the right to:

145 “(1) Upon written request, receive written notification from the authorized
146 law enforcement official not later than 60 days before the date of the intended destruction or
147 disposal; and

148 “(2) Upon written request, be granted an extended preservation of the PERK
149 or its probative contents.

150 “(3) Be informed, in writing, of the rights established under this
151 subsection.”.

152 (d) Section 101(c) (D.C. Official Code § 23-1910) is amended to read as follows:

153 “In addition to the notice requirements set forth in subchapter I of this chapter, MPD shall:

154 “(1) Inform the sexual assault victim of the toxicology results and findings of her
155 or his sexual assault forensic kit examination; provided, that the MPD is not required to disclose
156 to the sexual assault victim the identity of any suspect implicated by DNA or similar testing for
157 cases with an open investigation or active prosecution;

158 “(2) Make reasonable attempts to notify a sexual assault victim of the MPD’s intent
159 to communicate with the suspect before communicating with the suspect and alerting the suspect
160 of the sexual assault allegation made against the suspect; provided, that if prior notification is not
161 possible, notification shall be made as soon as is reasonably possible after the communication with
162 the suspect has occurred; and

163 “(3) Inform the sexual assault victim that she or he has the following rights:

164 “(A) They have the right to know the status of their Physical Evidence
165 Recovery Kit (PERK) testing process; provided, that, at a minimum, the victim shall be informed
166 of the reasons for any delay in processing and the eventual completion of the testing and analysis
167 of the kit and/or the toxicology specimens related to her or his case;

168 “(B) They have a right to know the results of the PERK regardless of
169 whether the DFS or another accredited laboratory performed the testing, or the existence of an
170 open investigation or prosecution, without request for permission from the prosecutor to inform
171 the victim;

172 “(C) They have the right to have their PERK and any additional probative
173 or evidentiary contents preserved, without charge, for the duration of the maximum applicable
174 statute of limitations;

175 “(D) They have the right to be informed of any PERK test results, including
176 a DNA profile match, toxicology report, or other information collected as part of a medical forensic
177 examination, if such disclosure does not impede or compromise an ongoing investigation; and

178 “(E) They have the right to be provided a written copy of all policies
179 governing the collection and preservation of a sexual assault evidence collection kit; and

180 “(4) Provide the victim with the “Your Rights and Options as a Victim of Sexual
181 Assault” brochure, as approved by the Sexual Assault Response Team (SART) which shall
182 include, but not be limited to, the information listed in subparagraph (3) of this subsection.”.

183 (e) Section 101(c) (D.C. Official Code § 23-1911) is amended to read as follows:

184 “This subchapter does not create a cause of action or defense in favor of any person arising
185 out of the failure to accord to a sexual assault victim the rights enumerated in D.C. Official Code
186 § 23-1908 or the violation of any other provisions”.

187 (f) Section 102(c) (D.C. Official Code § 14-312) is amended as follows:

188 (1) Subsection (a)(6) is amended to read as follows:

189 “(6) “Sexual assault victim” means an individual 12 years of age or older against
190 whom sexual assault has been committed or is alleged to have been committed. The term also
191 includes a deceased victim of sexual assault.”.

192 (2) Subsection (a)(7) is amended to read as follows:

193 “(7) “Sexual assault victim advocate” means:

194 “(A) A trained advocate employed by a community-based advocacy
195 organization that is a member of the DC SANE program, or its successor program; or

196 “(B) A trained advocate who has received a Basic Certification as certified
197 by the Office of Victim Services and Justice Grants.”.

198 (3) Subsection (b) is amended to read as follows:

199 “(b)(1) A sexual assault victim advocate shall not disclose a confidential
200 communication except:

201 “(A) As required by statute or by a court of law;

202 “(B) As voluntarily authorized in writing by the sexual
203 assault victim;

204 “(C) To other individuals employed by the DC SANE
205 program and third party providers when and to the extent necessary to facilitate the delivery of
206 services to the sexual assault victim;

207 “(D) To the MPD or other law enforcement agency to the
208 extent necessary to protect the sexual assault victim or another individual from a substantial risk
209 of imminent and serious physical injury;

210 “(E) To compile statistical or anecdotal information, without
211 personal identifying information, for research or public information purposes; or

212 “(F) For any confidential communications relevant to a
213 claim or defense if the sexual assault victim files a lawsuit against a sexual assault victim advocate
214 or the DC SANE program.

215 “(2) Unless the disclosure is public, confidential communications
216 disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient
217 except as authorized in paragraph (1) of this subsection.

218 “(3) Confidential communications are not waived by the presence
219 of a sign language or foreign language interpreter. An interpreter is subject to the same disclosure

limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

“(4) The confidential nature of the communication is not waived by:

“(A) The presence of a third person who is required for the response at the time of the communication;

“(B) Group counseling; or

“(C) Disclosure to a third person with the consent of the victim where reasonably necessary to accomplish the purpose for which the advocate is consulted.

“(5) Except as provided for in this Act, no sexual assault victim advocate shall be examined as a witness in any civil or criminal proceeding as to any confidential communication without the written consent of the victim or the representative of the victim as provided in subparagraph (B).

“(6) The presence of a sexual assault victim’s advocate or sexual assault counselor does not operate to defeat any privilege otherwise guaranteed by law.

“(7) The sexual assault victim advocate shall be exempt from mandatory reporting of any crime disclosed in a confidential communication unless:

“(A) The sexual assault victim is under the age of 12;

“(B) The crime disclosed to the sexual assault victim advocate includes a perpetrator or alleged perpetrator who has a significant relationship to the sexual assault victim; or

“(C) The crime disclosed to the sexual assault victim advocate includes a perpetrator or alleged perpetrator who is more than 4 years older than the sexual assault victim.”.

243 (g) Section 201(8) (D.C. Official Code § 4-561.01(8)) is amended to read as follows:

244 “(8) “OVSJG” means the Office of Victim Services and Justice Grants.”.

245 (h) Section 202(b) (D.C. Official Code § 4-561.02(b)) is amended to read as follows:

246 “(b) The DFS shall process all sexual assault forensic examination kits which are not
247 involved in consumption litigation within 90 days from the date of receipt.

248 “(1) Sexual assault forensic examination kits which are involved in consumption
249 litigation shall be tested within 75 days of receipt of a consumption determination.

250 “(2) The DFS shall be permitted to delegate sexual assault forensic examination kit
251 processing to another accredited laboratory. The contracting agency, if other than the DFS, shall
252 provide the DFS and MPD with a copy of the laboratory report associated with the sexual assault
253 forensic examination kit processing within 30 days of receipt.”.

254 (i) Section 209 (D.C. Official Code §4-561.09(a)) is amended by adding a new
255 subparagraph to read as follows:

256 “(6) The number of:

257 “(A) Victims informed of the results of the sexual assault forensic
258 examination kit; and

259 “(B) Victims who decline to be informed of the results of the sexual assault
260 forensic examination kit.”.

261 (j) Section 210 (D.C. Official Code § 4-561.10) is amended to read as follows:

262 “In the annual report filed pursuant to D.C. Official Code § 5-1501.04(a)(5), the Director
263 of the DFS shall include the number of sexual assault forensic examination kits:

264 “(a) Received from the MPD;

265 “(b) Processed by the DFS, including the time it took for each kit to be processed; and

266 “(c) Where permission to consume was requested, including the number of times
267 permission was granted and the number of times permission was refused.”.

268 (k) Subparagraph (2) of subsection (c) of Section 212 (D.C. Official Code § 4-561.12(c)(2)
269 is amended to read as follows:

270 “The SART coordinator, who shall be appointed by the Director of the OVSJG;”.

271 (l) Section 213 (D.C. Official Code § 4-561.13) is amended to read as follows:

272 “4-561.13. Duties and responsibilities of the SART and SART members.

273 “(a) The SART shall:

274 “(1) Improve the coordination and functioning of victim services, medical forensic
275 care, investigations, and prosecutions available to victims of sexual assault;

276 “(2) Conduct regular case reviews, through the Case Review Subcommittee
277 established by Section 214 (D.C. Official Code § 4-561.14), of all parties involved in sexual assault
278 responses, including a review of sexual assault reports and investigations by the MPD and cases
279 reported to any member of the SART; and

280 “(3) Develop a protocol to ensure that feedback and recommendations from the
281 Case Review Subcommittee, established by Section 214 (D.C. Official Code § 4-561.14), are
282 incorporated into SART member agencies’ policies, procedures, practices, training, and decisions
283 to re-examine investigations, when applicable.

284 “(4) Establish a Feedback Review Committee for the purpose of receiving and
285 investigating all complaints and comments from victims of sexual assault.

286 “(5) Issue an annual report to the Council and the Mayor which includes:

287 “(A) A summary of the case review activities conducted pursuant to
288 paragraph (2) of this section;

289 “(B) A summary of all feedback received and the outcomes of all
290 investigations pursuant to this feedback in paragraph (5) of this section;
291 “(C) The number of victims that were informed by MPD of the results of
292 their Physical Evidence Recovery Kit analysis pursuant to Section 215 (D.C. Official Code §4-
293 561.15);
294 “(D) Trends in victimization and reporting identified during the course of
295 the year;
296 “(E) Key activities conducted during the preceding year; and
297 “(F) Key activities planned for the upcoming year.”.

298 “(b) The SART members shall:
299 “(1) Provide aggregate data to other members of the SART which includes, but is
300 not limited to:
301 “(A) The numbers of cases involving sexual assault that came to the
302 attention of the SART member;
303 “(B) Demographics of sexual assault victims and offenders, if known, that
304 came to the attention of the SART member;
305 “(C) Type and extent of service provided to the sexual assault victim by
306 each SART member agency;
307 “(D) Disposition of each case closed by the SART member agency; and
308 “(E) Any other information requested by the Director of the Office of
309 Victim Services and Justice Grants or the chairperson of the SART that is directly related to sexual
310 assault cases.”.

311 (m) Subsection 214(b) (D.C. Official Code § 4-561.14(b)) is amended as follows:

312 (1) Subparagraph (1) (D.C. Official Code § 4-561.14(b)(1) is repealed; and

313 (2) Subparagraph (4) (D.C. Official Code § 4-561.14(b)(4) is amended to read as

314 follows:

315 “(4) A representative, selected by the OVSJG, from a community-based
316 organization that is providing post-assault mental health services;”.

317 Sec. 3. Section 4 of the Emergency Care for Sexual Assault Victims Act of 2008, effective
318 March 25, 2009 (D.C. Law 17-346; D.C. Official Code § 7-2123), is amended to read as follows:

319 “All hospitals that provide emergency care to victims of sexual assault shall:

320 “(1) Provide each victim of sexual assault written information developed pursuant
321 to D.C. Official Code § 7-2122;

322 “(2) Provide each victim of sexual assault written information developed pursuant
323 to D.C. Official Code § 23-1908;

324 “(3) Orally inform each victim of sexual assault in a language he or she understands
325 of their right to obtain a medical forensic exam, their right to consult with a sexual assault victim
326 advocate, their options regarding prophylactic antibiotics for the treatment of sexually transmitted
327 diseases and emergency contraception for the prevention of pregnancy;

328 “(4) Immediately notify the DC SANE program, as established by D.C. Official
329 Code § 23-1907(a)(2); and

330 “(5) Consistent with accepted medical practice and protocols, immediately provide
331 prophylactic antibiotics for the treatment of sexually transmitted diseases and emergency
332 contraception for the prevention of pregnancy to each victim of sexual assault, if the victim
333 requests it and if the requested treatment is not medically contraindicated.”.

334 Sec. 4. Section 252(c) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C.
335 Law 10-257; D.C. Official Code § 22-3020.52(c)), is amended by adding a new subparagraph (3)
336 to read as follows:

337 “(3) The notification requirements of subsection (a) of this section shall not apply
338 to the confidential communications between a sexual assault victim advocate, as defined in D.C.
339 Official Code § 23-1907(8) and under D.C. Official Code § 14-312(6), and a sexual assault victim
340 who is 12 years old or older related to a sexual assault or alleged sexual assault committed by
341 someone with no significant relationship to the sexual assault victim.”.

342 Sec. 5. Subchapter II of Chapter 30 of Title 22 of the D.C. Official Code is amended by
343 adding a new Section 3006a to read as follows:

344 “22-3006a. Unlawful removal of another person’s clothing.

345 “(a) It shall be unlawful for a person to remove another person’s clothing covering the
346 immediate area of their body parts, as described in D.C. Official Code § 22-3001(9), without the
347 person’s consent; provided, that this prohibition shall not include the removal of clothing that is
348 intended:

349 “(1) To provide medical or lifesaving care to the person; or

350 “(2) By a parent, guardian, or caretaker as part of the normal course of
351 responsibility of the parent, guardian, or caretaker to a person who is unable to understand the
352 nature of the act or give knowing consent due to age, diminished capacity, or medical condition.

353 “(b) A violation of this section shall be subject to the penalties in D.C. Official Code § 22-
354 3006.”.

355 Sec. 6. Section 7 of the Victims of Violent Crime Compensation Act of 1996, effective
356 April 9, 1997 (D.C. Law 11-243; D.C. Official Code § 4-506), is amended by adding a new
357 subsection (e) to read as follows:

358 “(e) For victims or secondary victims who are dependents on a primary insurance holder’s
359 insurance policy, the victim or secondary victim may be eligible for compensation under this
360 chapter without first using the primary insurance holder’s insurance policy.”.

361 Sec. 7. Fiscal impact statement.

362 The Council adopts the fiscal impact statement provided in the committee report as the
363 fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975,
364 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

365 Sec. 8. Effective date.

366 This act shall take effect following approval by the Mayor (or in the event of veto by the
367 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
368 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24,
369 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
370 Columbia Register.